

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. GRADFORD,
Plaintiff,
v.
F. VELASCO, et al.,
Defendant

No. 1:20-cv-00543-NONE-EPG (PC)

FINDINGS AND RECOMMENDATIONS

THAT PLAINTIFF'S CASE BE DISMISSED

WITHOUT PREJUDICE AS VOLUNTARILY

DISMISSED

Plaintiff William J. Gradford is a former pretrial detainee proceeding *pro se* and *in forma pauperis* in this civil rights action. On May 25, 2021, Plaintiff filed a motion titled “plaintiff’s request to dismiss this case.” (ECF No. 65). Because this filing and the record demonstrate that Plaintiff wishes to voluntarily dismiss this case under Federal Rule of Civil Procedure 41(a), the Court recommends that this action be dismissed without prejudice.

I. BACKGROUND

Plaintiff filed this lawsuit on April 16, 2020, against Deputies F. Velasco and T. Webster (ECF No. 1). Plaintiff's claims arise during his incarceration at the Stanislaus County Public Safety Center, with Plaintiff asserting that the Defendants harassed and intimidated him and then retaliated against him after he complained about their conduct. After screening the complaint, the Court found that Plaintiff sufficiently alleged "claims against Defendant[] Velasco for verbal harassment in violation of the Fourteenth Amendment and Velasco and Webster for retaliation in

1 violation of the First Amendment.” (ECF No. 10, p. 13). After Plaintiff notified the Court that he
2 wished to proceed only on the claims found cognizable in the screening order (ECF No. 11), this
3 Court issued findings and recommendations consistent with the screening order (ECF No. 12),
4 which the District Judge later adopted (ECF No. 15).

5 For some time, Plaintiff litigated this case primarily by filing procedurally improper,
6 unfounded, and frivolous motions, leading the Court to warn Plaintiff of sanctions should he
7 continue. (See ECF Nos. 40, 50, 58). As one example, Plaintiff filed a motion to voluntarily
8 dismiss this case on April 15, 2021, indicating that a settlement agreement had been reached.
9 (ECF No. 42). However, he later moved to withdraw his motion to dismiss, stating that “Plaintiff
10 has simply become confused with multi[ple] cases and related cases in the courts since 2016 up to
11 date” and alleged that defense counsel has retaliated against him. (ECF 49, p. 1). In
12 recommending that Plaintiff be permitted to withdraw the motion to dismiss, the Court noted that
13 it was yet another recent example of a frivolous filing:

14 Plaintiff’s withdrawn motion to dismiss . . . [is] frivolous because [it is]
15 objectively unreasonable. The withdrawn motion to dismiss also includes text []
16 that appears to be from letters the clerk sent to Plaintiff and aspects of the
screening order. It is not a request with any legal basis. . . .

17 These are not the only frivolous filings Plaintiff has made in this case. In the
month of April alone, Plaintiff filed three other frivolous documents. His request
18 for leave, filed on April 14, 2021, (ECF No. 39), suffers from almost identical
defects as does his motion for an order. Plaintiff filed a notice on April 19, 2021
19 that appears to be a handwritten copy of part of the table of contents of the local
rules for this district. (ECF No. 44). Similarly, Plaintiff’s April 22, 2021 notice is a
32-page filing, much of which appears to be a handwritten copy of parts of several
20 court orders and part of the form complaint for prisoners. (ECF No. 48).
(ECF No. 50, p. 5-6). The District Judge adopted the findings and recommendations and granted
Plaintiff’s motion to withdraw the motion to dismiss. (ECF No. 68).

23 **II. CURRENT MOTION**

24 On May 25, 2021, plaintiff filed a document entitled “Plaintiff’s request to dismiss this
25 case.” (ECF No. 65). The motion begins by referring to Plaintiff’s earlier filing requesting that
26 this case be deemed related to Plaintiff’s other case, 1:18-cv-01364-DAD-GSA. under Local Rule
27 123 (ECF No. 4), which request this Court denied (ECF No. 7), concluding that the cases were
28 not related. Notably, 1:18-cv-01364-DAD-GSA was terminated in January 2021, with the District

1 Court denying a motion for reconsideration in March 2021, which is a couple months before
2 Plaintiff filed his motion to dismiss in this case. Plaintiff concludes by stating “dismiss . . . this
3 case” and that “[t]his action is against Deputies F. Velasco and T. Webster at the County Public
4 Safety Center. Defendant’s request to dismiss this case.” (ECF No. 65, p. 2-3).

5 The same day that Plaintiff filed the motion to dismiss, Defendants filed a statement of
6 non-opposition. (ECF No. 66).

7 Because Plaintiff previously filed a motion to dismiss (ECF No. 42), which he later
8 withdrew (ECF No. 49), the Court issued an order on June 7, 2021, directing Plaintiff to clarify
9 the purpose behind the instant motion to dismiss. (ECF No. 69). Specifically, the Court directed
10 Plaintiff to submit a notice filing within 14 days of service of the order, stating whether his filing
11 intended to voluntarily dismiss this case. The Court explained that this meant that the action
12 would be terminated from the docket without prejudice and the case would no longer continue
13 against the Defendants. Importantly, the Court warned Plaintiff that, if he failed to respond within
14 the 14-day period, it would be presumed that he intended to dismiss this case, as indicated in his
15 filing.

16 It has been more than 14 days since the issuance of this order and Plaintiff has not
17 responded to the Court’s order.

18 **I. ANALYSIS**

19 Rule 41(a)(1)(ii) permits a “plaintiff [to voluntarily] dismiss an action without a court
20 order by filing a stipulation of dismissal signed by all parties who have appeared.” Although
21 Defendants did not sign a stipulation of dismissal, Defendants submitted a statement signed by
22 defense counsel saying that “Defendants do not oppose plaintiff’s request to dismiss,” which
23 satisfies the requirements of Rule 41(a)(1)(ii). (ECF No. 66); *see Eitel v. McCool*, 782 F.2d 1470,
24 1473 (9th Cir. 1986) (“We . . . find that the parties’ oral representations to the court agreeing to a
25 dismissal with prejudice constituted a voluntary stipulated dismissal under Rule 41(a)(1)(ii.”).

26 **II. CONCLUSIONS AND RECOMMENDATIONS**

27 Accordingly, the Court HEREBY RECOMMENDS that:

28 1. Plaintiff’s motion to dismiss (ECF No. 65) be construed as a motion to voluntarily dismiss

1 this case under Rule 41(a)(1)(ii);

2 2. This case be dismissed without prejudice; and

3 3. The Clerk of Court be directed to close this case.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
6 (14) days after being served with these findings and recommendations, any party may file written
7 objections with the court. Such a document should be captioned “Objections to Magistrate
8 Judge’s Findings and Recommendations.” Any response to the objections shall be served and
9 filed within fourteen (14) days after service of the objections.

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11 IT IS SO ORDERED.

12 Dated: July 1, 2021

13 _____
14 /s/ *Eric P. Groj*
15 UNITED STATES MAGISTRATE JUDGE

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